IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15-12-2025

PRONOUNCED ON: 19-12-2025

CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

OSA Nos.15 & 16 of 2025
AND
CMP NO. 1083 OF 2025

1. S.P.Vijaykumar
S/o. S.K.Parandaman, No.30, Zakaria
Colony, 4th Street, Choolaimedu,
Chennai-600 094

Appellant(s) in both OSAs

Vs

1. Smt.Padmavathy
W/o. S.K.Parandaman,
Residing at No.3/6, Veerasamy Pillai
Street, Egmore, Chennai-600 008

2.S.P.Krishnakumar
S/o. S.K.Parantham,
No.30, Zakaria Colony, 4th Street,
Choolaimedu, Chennai -600 094.

Trilok Kumar(deceased)

3.Bharathi Thirulokkumar
W/o. Trilok Kumar,
Residing at No.24,EVR Periar Street,

NGO Nagar, Ponneri, Thiruvallur
District-601 204

4.Pragathi
D/o. Trilok Kumar,
Residing at No.24,EVR Periar Street,
NGO Nagar, Ponneri,
Thiruvallur District-601 204

Respondent(s)

OSA No. 15 of 2025

PRAYER

Original Side Appeal filed under Order 36 Rule 1 of O.S.Rules r/w Clause 15 of the Letters Patent, praying to Set aside the Judgment and decree passed in Tr.C.S.No. 803 of 2016 dated 02.09.2022.

OSA No. 16 of 2025

PRAYER

Original Side Appeal filed under Order 36 Rule 1 of O.S.Rules r/w Clause 15 of the Letters Patent, praying to allow this original side appeal to set aside the Judgment and decree passed in TOS No.6/2003 dt. 02.09.2022 on the file of this court as such further or other orders as this Honble Court may deem fit and proper in the circumstance of the case.

For Appellant(s): Mr.S.Rajendrakumar
in both OSAs

For Respondent(s): Mr.A.Palaniappan for R1
in both OSAs.

COMMON JUDGMENT

(*Judgment of the Court was made by* ***C.Kumarappan J.***)

OSA No.15 of 2025 has arisen against the judgment and decree passed in Tr.C.S.No.802 of 2016. Similarly, OSA.No.16 of 2025 has arisen against the order passed in TOS.No.6 of 2023. Since the parties and the subject matter involved in both the suits are one and the same, the learned Single Judge thought it fit to dispose of the above suits by a common order dated 02.09.2022. Therefore, it becomes appropriate for us to dispose both the OSAs simultaneously.

2.The appellant herein was the 2nd plaintiff, as well as the first defendant respectively in TOS and Tr.C.S.

3.The brief facts which are necessary for the disposal of the present OSAs is that one S.K.Parandaman was the absolute owner of the suit property. His wife is Smt.Padmavathy. They have three sons by name S.P.Krishnakumar, S.P.Vijayakumar and S.P.Thirulok Kumar. Among the legal heirs, S.P.Krishnakumar and S.P.Vijayakumar claim Testamentary succession by relying upon an unregistered Will dated 01.07.1998. On the

contrary, the other two legal heirs of S.K.Parandaman, namely his wife S.Padmavathy and another son S.P.Thirulok Kumar propounding an intestate succession. Therefore, the central issue involved in the present OSAs is to find out the nature of succession qua whether testamentary succession or intestate succession. Claiming testamentary succession, two sons viz., S.P.Krishnakumar and S.P.Vijayakumar filed Testamentary Original Suit in TOS.No.6 of 2003. Similarly, other two legal heirs filed a suit for partition to divide the suit property into 4 shares and for allotting each one share to all the legal heirs in Tr.C.S.No.803 of 2016.

3.(a). The suit property was originally belongs to S.K.Parandaman and he died on 17.11.1998. According to the plaintiffs in TOS.No.6 of 2003, their father executed an unregistered Will on 01.07.1998 bequeathing the property among the sons excluding his wife. The plaintiffs in TOS.No.6 of 2003 would submit that after the demise of their father S.K.Parandaman, by virtue of the Will dated 01.07.1998 the property devolved upon them as per the recitals of the Will. Hence, prayed to decree the Testamentary Original Suit.

4.Denying the above allegations, the defendant in TOS viz., the wife of S.K.Parandaman namely Mrs.Padmavathy and his another son S.P.Thirulok

Kumar have filed the written statement denying the existence of the Will dated 01.07.1998. It is their specific submission that S.K.Parandaman had never executed any Will and that the signature found in the above unregistered Will is not that of the testator. They would further submit that for the pre-suit notice issued by these defendants, the plaintiff did not reply and refer about the existence of the Will. Hence, the defendants prayed to dismiss the Testamentary Original Suit and prayed to divide the suit property into four equal shares and to allot one share each to all the legal heirs.

5.It is pertinent to mention here that the defendants 1 & 2 in the Testamentary Original Suit have filed a suit for partition in C.S.No.227 of 2000, which was re-numbered as Tr.C.S.No.803 of 2016, wherein they pleaded intestate succession as mentioned hereinabove, and such suit was resisted by the plaintiffs in Testamentary Original Suit on the basis of the alleged Will dated 01.07.1998. The learned Single Judge, on the basis of the pleadings affirmed by one party and denied by the other party, has framed the following issues:-

"***<u>In Testamentary Original Suit</u>***

(1)Whether the alleged Will dated 01.07.1998 executed by late S.K.Paranthaman is true and valid?

(2) Whether the Plaintiffs are entitled to partition as prayed for in the plaint.
(3)To what relief, the Plaintiffs are entitled?

In Civil Suit

(1)Whether the Plaintiffs are entitled to partition in view of the fact that there is a testamentary disposition of the plaint schedule properties by late S.K.Paranthaman by Will dated 1.7.1998.

(2) To what relief, the Plaintiffs are entitled?"

6.In the TOS.No.6 of 2003 on behalf of the plaintiffs, 3 witnesses were examined as PW1 to PW3, and 34 documents were marked as Exs.Pl to P34. On behalf of the defendants, 2 witnesses were examined as DW1 & DW2 and 3 documents were marked as Exs.D1 to D3.

6.(b). In Tr.C.S.No.803 of 2016, on behalf of the plaintiffs, 2 witness were examined as PW1 and PW2, and 4 documents were marked as Exs.P1 to P4. Similarly, on behalf of the defendants, one witness was examined as DW1, and 5 documents were marked as Exs.D1 to D5. Further, as a Court document, a failure report of Mediation Centre was marked as Ex.C1.

7.The learned Single Judge, after having considered the oral and documentary evidence and after hearing either side, has ultimately arrived at a conclusion that the plaintiff in Testamentary Original Suit has miserably

failed to prove the due execution of the Will dated 01.07.1998 and has ultimately dismissed the Testamentary Original Suit. As a sequitur, granted decree in partition suit as prayed for. Aggrieved with the same, the first plaintiff in the Testamentary Original Suit has preferred the present OSAs.

8.We have heard Mr.S.Rajendrakumar, learned counsel for the appellant, and Mr.A.Palaniappan, learned counsel appearing for the first respondent.

9.The learned counsel for the appellant would vehemently contend that the other available attesting witness viz., Mr.Kosalram, who is the father-in-law of his brother S.P.Krishnakumar, due to the enmity did not support his case of intestate succession. But, the learned Single Judge inspite of proof about the enmity, did not consider the same. It is his further submission that by examining PW3-R.Kalavathi, they have proved the signature of one of the attestors Mr.Radhakrishnan. Whereas the learned Single Judge did not consider such material evidence and has arrived at a erroneous conclusion that the Will has not been proved. It is the submission of the appellant that if the attestor could not be found, the propounder of the Will can employ Section 69 of the Indian Evidence Act and can prove the Will as

contemplated under that Section. It is the further submission of the learned counsel for the appellant that the learned Single Judge did not consider the rivalry among the plaintiffs. Hence, prayed to allow the OSAs.

10.*Per contra,* the said contention was stoutly objected by the other legal heir of S.K.Parandaman by contending that no Will was executed by Mr.S.K.Parandaman, and that the signature found in the alleged Will would demonstrate the fabrication of the same. It is their further submission that the plaintiff did not prove the Will, as provided under Sections 63 of the Indian Succession Act, and 68 of the Indian Evidence Act. They were further submit that the question of invoking Section 69 of the Indian Evidence Act will have no place in the present case, as one of the attestors is very well alive. The sum and substance of their submission is that, all the legal heirs of S.K.Parandaman are entitled to have equal shares by way of an intestate succession. Hence, prayed to dismiss the OSAs.

11.We have given our anxious consideration to either side submissions.

12.Based upon the pleadings and on the basis of the submissions of either side, the following points need to be determined:-

(i).Whether the Will dated 01.07.1998 allegedly executed by Late.S.K.Parandaman is true and valid?

(ii).Whether the parties to the suit are entitled for a partition as prayed in Tr.C.S.No.803 of 2016?

13.Since both the issues are intertwined and interconnected, this Court deems it appropriate to consider both the points simultaneously. Though the Testamentary Original Suit was originally filed by two sons viz., S.P.Krishnakumar and S.P.Vijayakumar at the time of trial, one of the plaintiffs in TOS qua S.P.Krishnakumar did not support the Testamentary succession. However, the other plaintiff S.P.Vijayakumar attempted to prove the execution of the Will. In order to prove the execution of the Will, he himself was examined as PW1 and one Mr.Sakthivel, who happens to be the co-employee of the alleged testator deceased S.K.Parandaman was examined as PW2, and one Mrs.Kalavathy, who was the daughter of one Mr.Radhakrishnan was examined as PW3.

14.Before we delve further into the facts, we deem it appropriate to set out the principles in respect of proof of the Will. According to Section 68 of the Indian Evidence Act, and Section 63 of the Indian Succession Act, for proving the Will, it is mandatory on the part of the propounder to examine the

attestor. If in any case, the attestors are not alive or not found, then Section 69 of Indian Evidence Act will come into operation and it becomes incumbent upon the propounder to prove at least the signature of one attesting witness.

15.Apart from that, it is the primordial duty of the propounder of the Will to dispel all the suspicious circumstances. The Hon'ble Supreme Court in ***Lilian Coelho and others Vs. Myra Phiomena Coalho*** reported in ***(2025) 2 SCC 633*** has distinguished the difference between validly executed Will and genuine Will, and the Hon'ble Supreme Court in the above judgment has held that, even after holding that a Will is genuine, it is within the jurisdiction of the Court to hold that it is not worthy to act upon as being shrouded with suspicious circumstances if the propounder failed to remove such suspicious circumstances to the satisfaction of the Court.

16.Apart from that, the Hon'ble Supreme Court in ***Shivakumar and others Vs. Sharanabasappa and others*** reported in ***(2021) 11 SCC 277***, after elaborately considering various precedents, has ultimately enunciated the following principles:-

"***12.*** *For what has been noticed hereinabove, the relevant*

principles governing the adjudicatory process concerning proof of a will could be broadly summarised as follows:

12.1. *Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.*

12.2. *Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.*

12.3. *The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.*

12.4. *The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the*

circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter

12.6. A circumstance is "suspicious" when it is not normal or is "not normally expected in a normal situation or is not expected of a normal person". As put by this Court, the suspicious features must be "real, germane and valid" and not merely the "fantasy of the doubting mind*"*

12.7. *As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants;* ***an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the***

circumstances which may give rise to suspicion. *The circumstances abovenoted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will.* ***On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.***

12.8. *The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?*

12.9. *In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will."*

[Emphasis supplied by this Court]

17.It is also relevant to mention that the propounder of the Will has to satisfy the conditions stipulated under Section 63 of the Indian Succession Act. For ready reference, Section 63 of the Indian Succession Act is extracted hereunder:-

> "***63.Execution of unprivileged Wills****.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 1[or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules-*
>
> *(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.*
>
> *(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.*
>
> *(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."*

18.Section 63 of the Indian Succession Act is balkanised under three categories viz.,

(i) 63(a) deals with Signature of the testator of the Will,

(ii)63(b) deals about the animus to execute should be evidenced by placement of signature and

(iii)63(c) deals about the attestation and *animo attestandi*. Therefore, whenever the Courts are confronted with the proof of Will, it is mandatory for the Court to find out whether the above three conditions are satisfied.

19.In the case in hand, admittedly no attestator was examined. On perusal of the subject Will, there were three witnesses viz., Vadivel, S.K.Karnan and Mr.E.Kosalram. Among the above three persons, one Vadivel and S.K.Karnan are no more. The other witness Mr.E.Kosalram, is the father-in-law of S.P.Krishna Kumar, the first plaintiff in the testamentary suit. Though the appellant would contend that one Mrs.Kalavathy was examined to prove the attestation of one of the attestator Late.Radhakrishnan, while looking at Ex.P1 (Will), we are not in a position to find out any attestor by name Mr.Radhakrishnan. Though one Radhakrishnan's name is found a place in the witness column, it is shown as the father of the first attestor one Mr.Vadivel. Therefore, though PW3 was examined to prove the signature of one Mr.Radhakrishnan, literally Mr.Radhakrishnan was not all an attestor.

20.At this juncture, it is appropriate to refer, when the proof of signature of the attestor will come into operation. As already stated, the three

ingredients stipulated under Section 63 of the Indian Succession Act has to be satisfied and proved as per Section 68 of the Indian Evidence Act. In the case in hand, the propounder of the Will was not able to fulfil the conditions stipulated under Section 68 of the Indian Evidence Act, as two of the attestor are no more, and another attestor Mr.Kosalram did not support the plaintiffs and was not examined. Therefore, it is contended that by invoking Section 69 of the Indian Evidence Act, they attempted to prove the execution of the Will by proving the signature of an attestor. As already stated, there are no one exists as an attestor by name Radhakrishnan.

21.At this juncture, it is appropriate to refer Section 69 of the Indian Evidence Act:-

> "***69.Proof where no attesting witness found***.—*If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person."*

22.From the reading of the above Section, the invocation of Section 69 of the Indian Evidence Act will come into operation, when no such attesting witness can be found. In the case in hand, admittedly one attesting witness Mr.Kosalram is found. However, it is the contention of the appellant that due

to the difference of opinion between the appellant and his brother S.P.Krishnakumar, his father-in-law viz., Mr.Kosalram was not examined. From the above contention, it is amply clear that, though he was found, due to the other circumstances, he was not examined. Therefore, this Court is of the firm view that there were no ground to invoke Section 69 of the Indian Evidence Act. Accordingly, there are no foundational fact for invoking Section 69 of the Indian Evidence Act, as the attesting witness Kosalram is very well found.

23.At this juncture, it is appropriate to refer Section 71 of the Indian Evidence Act. It gives another protection to the propounder of the Will, when the attesting witness denies or does not recollect the execution of the document. According to Section 71, if the attestation is denied, the Will can be proved like any other documents. For ready reference, Section 71 of the Indian Evidence Act is extracted hereinbelow:-

> "***71.Proof when attesting witness denies the execution***.—*If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.*"

24.In order to invoke Section 71 of the Indian Evidence Act, it becomes essential of the denial of the attesting witness before the Court. But,

here, no attesting witness was examined.

25.In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court in ***Ashuthosh Samanta (D) by Lrs. and others Vs.SM.Ranjan Bala Dasi and others*** reported in ***2023 SCC OnLine SC 255***, after referring ***Babu Singh and others Vs. Ram Sahai alias Ram Singh*** reported in ***(2008) 14 SCC 754***, has held as under:-

> *"16. In Babu Singh v. Ram Sahai alias Ram Singh, the Court held as follows with regard to Section 69:*
>
> > *"It would apply, inter alia, in a case where the attesting witness is either dead or out of the jurisdiction of the Court or kept out of the way by the adverse party or cannot be traced despite diligent search. Only in that event, the will may be proved in the manner indication in Section 69 i.e., by examining witnesses who were able to prove the handwriting of the testator or executant. The burden of proof then may be shifted to others.*
> > *18. Whereas, however, a will ordinarily must be proved keeping in view the provisions of Section 63 of the Succession Act and Section 68 of the Act, in the event the ingredients thereof, as noticed hereinabove, are brought on record, strict proof of execution and attestation stands relaxed. However, signature and handwriting, as contemplated in Section 69, must be proved.""*

26.From the above discussion, it is amply clear that there were no trigger point to invoke neither Section 69 nor Section 71 of the Indian

Evidence Act. When there is no foundational fact or any reason to invoke Section 69 or 71 of the Indian Evidence Act, any unwarranted indulgence, permitting extra liberal flexibility stipulated under Sections 63 of the Indian Succession Act & 68 of the Indian Evidence Act would render the above Sections become otiose. Therefore, this Court is of the firm view that the findings rendered by the learned Single Judge that the propounder of the Will has miserably failed to prove the execution of the Will dated 01.07.1998 is perfectly in order, and even before this Court the appellant could not make out any ground to deviate from the findings rendered by the learned Single Judge.

27.Once this Court arrives at a conclusion that the Will is not proved, then by virtue of the Hindu Succession Act, the appellant as well as the respondents, being the Class 1 legal heirs of the deceased S.K.Parandaman are equally entitled to have 1/ 4th share each in the suit property.

28.Accordingly, the judgment and decree of the learned Single Judge in TOS.No.6 of 2003 and Tr.C.S.No.803 of 2016 dated 02.09.2022 is hereby confirmed by dismissing both OSAs.

29.In the result, both OSAs are dismissed. There shall be no order as to costs. Consequently, connected CMP is also closed.

(S.M.SUBRAMANIAM J.)(C.KUMARAPPAN J.)
19.12.2025

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Index:Yes
Speaking order
Internet:Yes
Neutral Citation:Yes

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